

CHEROKEE INDIANS.

MEMORIAL

OF

JOHN ROGERS, *Principal Chief,*

AND

JAMES CAREY and THOMAS L. RODGERS,

*Chiefs and head men, being members of a Committee on behalf of the Cherokee
old settlers west of the Mississippi, for themselves and their people.*

APRIL 13, 1844.

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*To the Senate and House of Representatives of the United States of
America :*

An oppressed and ruined people, stripped of the property and deprived of the protection which were repeatedly promised and solemnly guarantied to them by the Government of the United States, appeal to the Congress of those United States for reparation. Pennyless and in exile, we are able to bring no influence to bear on the Government or people of this Republic, but the power of truth and the sympathy which wrong and oppression, when made manifest, never fail to excite. If these be not sufficient to procure your interposition in our behalf, nothing will be left to us and our people but oppression, dispersion, despair, and death.

Do not, we beseech you, turn a deaf ear to our complaints because other portions of the red men have been troublesome to your Government. If your policy has at times been thwarted, it was not by the Western Cherokees; if frauds have been committed, it was not by them; if your treasury has been plundered, they have shared no part of the spoil. In all their dealings with the United States, they have been open and fair and honest; always ready to accede to every reasonable wish expressed by your Government, committing encroachments upon none, and asking only to be allowed the enjoyment of their country and their homes in safety and in peace. Neither stained with your blood nor enriched by your money, we find ourselves stripped of our lands and driven from our habitations by men who have panted for the one and been loaded with the other. You have not been content to requite our peacefulness and good

faith by precipitating upon us a people more numerous than ourselves, to overthrow our government and despoil us of our possessions; but you have heaped money and favor upon their leaders, though always hostile to your policy, until you have given them power to murder with impunity their own most meritorious countrymen, and, with regular armed bands, kept under pay, to harass, imprison, and drive from their homes the ancient and rightful occupants of the country. Your friends have been sacrificed to your foes; and now that those friends lift their imploring hands to you almost in despair, will you coldly repulse them, because others for whom you have done so much, have been dishonest, avaricious, and ungrateful?

What was the condition of the Cherokee when the white sail of the European, rising out of the ocean, first struck the wandering eye of the red man as he gazed from the beach? Hear what the historian says, viz:

"The mountaineers of aboriginal America were the Cherokees, who occupied the upper valley of the Tennessee river, as far west as Muscle Shoals and the highlands of Carolina, Georgia, and Alabama, the most picturesque and most salubrious region east of the Mississippi. Their homes were encircled by blue hills rising beyond hills, of which the lofty peaks would kindle with the early light, and the overshadowing ridges envelop the valleys like a mass of clouds. There the rocky cliffs, rising in naked grandeur, defy the lightning, and mock the loudest peals of the thunderstorm; there the gentle slopes are covered with magnolias and flowering forest trees, decorated with roving climbers, and ring with the perpetual note of the whip-poor-will; there the wholesome water gushes profusely from the earth in transparent springs; snow-white cascades glitter on the hill sides; and the rivers, shallow but pleasant to the eye, rush through the narrow vales, which the abundant strawberry crimsons, and coppices of rhododendron and flaming azalea adorn. At the fall of the leaf, the fruit of the hickory and the chestnut is thickly strown on the ground. The fertile soil teems with luxuriant herbage, on which the roebuck fattens; the vivifying breeze is laden with fragrance; and daybreak is ever welcomed by the shrill cries of the social nighthawk and the liquid carols of the mocking-bird."

Such is the glowing description of our ancient country given by your own historian.*

From his abode among the mountains, the Cherokee had, in former times, stretched his arms from tide-water to the Ohio, and rejoiced in the glorious possessions which the Great Spirit had vouchsafed to him. He knew no superior but the Governor of the Universe, and he thought the will of that Power and his own strong arms had given him an exclusive title to his ample hunting-grounds and the country he inhabited. But your ancestors told him the Great Spirit had given them every continent and island they could reach with their ships; and, as they seemed to command His thunder and wield His lightnings, the red man was inclined to believe them. Thus, without conquest or purchase, *seeing was acquiring title*; and the red man found another being, assuming to be his superior, interposing between him and the Great Spirit, whom he had regarded as the only power which could rightfully dispossess him.

It is useless for the victims of this assumption to question its conformity to the laws which govern the conduct of the white men towards each other, or to the principles of the religion they profess. It has become a law to themselves, and the red man has been obliged to submit to it, because the white man is the strongest. In mitigation of its sternness, as at first administered, especially by the Spaniards, the English lawgivers have graciously admitted that the aboriginal nations had a right

* Bancroft.

of occupancy in their several territories, of which they could not rightfully be dispossessed but by conquest or consent.

Without dwelling upon the early history of the Cherokees, or the conduct pursued towards them by the white discoverers and early settlers, let us come down to the events out of which sprang the western Cherokee nation, and the rights of which they have recently been despoiled.

It has been assumed by your executive authorities that the western Cherokees were not a separate people, independent of the eastern Cherokees; that the lands possessed by them west of the State of Arkansas, were not their exclusive property, but the common property of all the Cherokees, east and west; and that no wrong has been done by throwing in upon them the whole eastern tribe, to take from them their possessions, overthrow their government, strip them of their property, and send them out exiles and wanderers, without a country or a home. We beg you to look back to the origin and progress of the Cherokee nation west, and see whether they have done an act, or assented to an arrangement, by which they could be rightfully visited with such calamities.

A bloody war between the Cherokee nation and the whites was terminated in 1785, by the treaty of Hopewell, entered into by commissioners on the part of the United States and the head men and warriors of all the Cherokees. A portion of the Cherokee people, not willing to comply with the requisitions of that treaty, soon afterwards embarking in pirogues, descended the Tennessee, Ohio, and Mississippi rivers, to the mouth of the St. Francis, in the Spanish province of Louisiana, now the State of Arkansas, and, ascending that stream, formed a settlement on its banks. They thus withdrew themselves, not only from their own nation, but beyond the limits of the United States. This was the germ of the western Cherokee nation. From their first settlement in Louisiana, a constant intercourse was kept up with their countrymen in the United States; and, in consequence of the superiority of their hunting grounds, they received frequent accessions to their numbers by the emigration of their eastern brethren. In a few years they found a more eligible location in the vicinity of White river, to which they removed.

The origin of the Cherokee nation west, therefore, dates back before the United States had themselves a shadow of title or claim to the lands which they occupied. For more than fifteen years had the emigration been progressing before that region was ceded to the United States, and the Cherokees had acquired a possessory title to a considerable extent of country, at least equal to that of the more wandering bands by which they were surrounded.

The eastern Cherokees in a few years became well informed of the fine country and abundance of game which were to be found on the White river and Arkansas. The old country was environed on three sides by white settlements; the game, to which a large portion of the people looked for subsistence, was fast disappearing; and some from choice, but more from necessity, were betaking themselves to agricultural pursuits. Two parties arose in the nation, one in favor of maintaining the hunter state, and the other in favor of adopting the habits and pursuits of civilized men. The latter, that they might pursue their object unmolested, desired a division of the country and the formation of two separate communities where they then resided; but the former, though concurring with

their brothers as to a division of the tribe, preferred a removal to the country beyond the Mississippi, as better adapted to their favorite pursuit. The views of the two parties, and the measures proposed by them as early as 1808, are clearly set forth in the preamble to the treaty of 1817, a portion of which is in the following words, viz :

"Whereas in the autumn of the year one thousand eight hundred and eight, a deputation from the upper and lower Cherokee towns, duly authorized by their nation, went on to the city of Washington, the first named to declare to the President of the United States their anxious desire to engage in the pursuits of agriculture and civilized life, in the country they then occupied, and to make known to the President of the United States the impracticability of inducing the nation at large to do this, and to request the establishment of a division line between the upper and lower towns, so as to include all the waters of the Hiwassee river to the upper town, that by thus contracting their society within narrow limits, they proposed to begin the establishment of fixed laws and a regular government; the deputies from the lower towns to make known their desire to continue the hunter life, and also the scarcity of game where they then lived, and under those circumstances, their wish to remove across the Mississippi river, on some vacant lands of the United States: And whereas the President of the United States, after maturely considering the petitions of both parties, on the ninth day of July, A. D. one thousand eight hundred and nine, including other subjects, answered those petitions as follows:

"The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid, and our good neighborhood. Those who wish to remove, are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouths of those rivers. The regular districts of the government of St. Louis are already laid off to the St. Francis. When this party shall have found a tract of country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right. Every aid towards their removal, and what will be necessary for them there, will then be freely administered to them; and when established in their new settlements, we shall still consider them our children, give them the benefit of exchanging their peltries for what they will want at our factories, and always hold them firmly by the hand."

Your particular attention is invoked to the foregoing extract, because it shows beyond contradiction, that the object of both parties in 1808, was the division of the Cherokee people into two communities, independent of each other—one to be a nation of hunters, and the other a nation of agriculturists.

After these assurances from the President, the Cherokees west increased more rapidly than before in numbers and power, and prior to 1817 counted from two to three thousand souls. They made treaties with their neighbors, and exercised all the powers of an independent Indian tribe, without interference, or any claim of right to interfere, on the part of the Cherokees east.

The United States recognised them as a separate people, by sending an agent among them, and, in every other respect treating them as entitled to the occupancy of the country in which they resided, as much as any other native tribe.

In 1813, Ta-ka-to-ka, a distinguished head man, joined the western Cherokees, and immediately became their principal chief. He made no less than four treaties with the Osages, all of which were broken by that faithless people almost as soon as made, and in 1817 the western Cherokees declared war. The Osages were severely chastised; but the United States interposed and prescribed terms of peace.

These facts are introduced to prove that the Cherokee nation west existed as a separate people, recognised as such by the United States, and exercising all the the powers appertaining to an independent Indian tribe,

even before the treaty of 1817. Their title to the country they occupied was as perfect as that of any other Indians, and no treaty was necessary to confirm it. But from 1808 there had been an understanding between the United States, the eastern Cherokees, and such of the western Cherokees as emigrated subsequent to that date, that the United States should receive out of the Cherokee lands east, an indemnity for the lands occupied by the emigrants west, and the treaty of 1817 was made in pursuance of that understanding. This treaty is in the nature of a deed of partition and exchange, to which there are three parties. Those parties, as set forth in the caption, are "*the United States*," "*the Cherokee nation east of the Mississippi river*," and "*the Cherokees on the Arkansas river*." The agents of the Cherokees on the Arkansas, as stated in the preamble, were clothed "with full power to execute a treaty relinquishing to the United States all the right, title, and interest of all lands of right to them belonging, as part of the Cherokee nation, which they have left or which they are about to leave."

These powers they exercised, by uniting with their eastern brethren in setting off a portion of their common country, and ceding it to the United States, as shown in the first and second articles of the treaty, in exchange for an equal quantity of land to be given to the Cherokees on the Arkansas, as shown in the fifth article.

The third article provides for taking a census of the eastern and western Cherokees, and the fourth for a division of the annuities between them, in the proportion of their numbers, so ascertained. The fifth article commences as follows, viz :

"The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to *give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have, or may hereafter receive from the Cherokee nation east of the Mississippi, acre for acre, as the just proportion due that portion of the nation on the Arkansas, agreeable to their numbers*," &c.

The article then describes the boundaries, leaving them open to the west, and provides that all existing treaties with the Cherokee nation shall continue to be in force in reference to both parties thereof; clearly implying that such would not be the fact without such special provision. In the signature of this treaty, the eastern and western chiefs do not appear as the chiefs of *one* people, but of *two*—the eastern chiefs signing first, and the western last, with the words "*Arkansas chiefs*" prefixed to their names.

By this treaty, therefore, the Government of the United States even then recognised the western Cherokees as a separate nation, with chiefs having power to cede away the right which they had, collectively, as well as individually, in the eastern Cherokee lands.

The objects proposed to be effected by this treaty were obviously as follows, viz :

1. To divide the Cherokee country east, between those who chose to remain in it and those who had emigrated or desired to emigrate to the country west of the Mississippi, and cede to the United States the portion assigned to those emigrants.
2. To give to the Cherokees west, in exchange for their portion of the eastern lands, a tract of country equal thereto, "*acre for acre*."
3. To divide the annuities then existing, between the eastern and western Cherokees, in proportion to their numbers.

Its obvious *effect* was, to divest the western Cherokees, thenceforward, of all property in the Eastern Cherokee lands ; but it did not convey to the eastern Cherokees any interest in the western Cherokee lands, which, in so many words, were given “ *to that part of the Cherokee nation on the Arkansas.*”

The boundaries assigned by this treaty to the Cherokees west, were a line running from the mouth of Point Remove, or Budwell's Old Place, on the north side of the Arkansas river, to Chataunga mountain, on White river, and up and between the two rivers for quantity. The western limits of their country could not be fixed until it was ascertained how many acres of the eastern Cherokee lands had been ceded to the United States by the treaty of 1817.

The Cherokees east became alarmed at the effect which the treaty of 1817 was likely to have on their nation, and in the winter of 1818 sent a delegation to Washington to effect some changes and close the points left open by that treaty. Their purpose was accomplished in February 1819, by another treaty, the object of which is stated in the preamble as follows, viz :

“ Whereas, a greater part of the Cherokee nation have expressed an earnest desire to remain on this side of the Mississippi, and being desirous, in order to commence those measures which they deem necessary to the civilization and preservation of their nation, that the treaty between the United States and them, signed the eighth day of July, eighteen hundred and seventeen, might, without further delay, or trouble, or expense of taking the census, as stipulated in said treaty, be finally adjusted, have offered to cede to the United States a tract of country at least as extensive as that which they probably are entitled to under its provisions, the contracting parties have agreed to and concluded the following articles.”

The first article of this treaty, after ceding to the United States by metes and bounds a portion of the Cherokee country east, &c., declares, “ that the lands hereby ceded by the Cherokee nation, are in full satisfaction of all claims which the United States have on them, on account of a cession to a *part of their nation*, who have or may hereafter emigrate to the Arkansas ; and this treaty is a final adjustment of that of 8th of July, 1817.”

Here the fact is expressly declared, that the cession of western lands was to a *part of* their nation and not the *whole* nation : to the part who had emigrated, or were about to emigrate to Arkansas, in exclusion of that part remaining in the Cherokee country east.

The western Cherokees were not parties to this treaty, and the “ final adjustment” spoken of, had reference to the eastern Cherokees only.

That neither the United States nor the eastern Cherokees then supposed they had power to bind the western Cherokees without their consent, is shown on the face of this paper.

The sixth article, after providing for the division of the annuities—two-thirds to the eastern Cherokees, and one-third to the western—contains the following reservation, viz :

“ But if the Cherokees west of the Mississippi object to this distribution, of which due notice shall be given them, before the expiration of one year after the ratification of this treaty, then the census, solely for distributing the annuities, shall be taken,” &c.

Nothing could more conclusively show that the western Cherokees were then considered as out of the pale of the Cherokee nation east, and having separate rights which could not be divested or even modified without their consent. With their approbation, however, the proposed distri-

bution of the annuities was carried into effect. In regard to territory, this treaty left the western Cherokees where it found them. They were entitled to as much land as had been ceded to the United States out of their ancient possessions; but how much that was, no measures were then taken to ascertain.

In 1824, a general council was held by the western Cherokees for the purpose of framing a written constitution and adopting a code of laws. After several fruitless efforts, the council appointed Daniel Brown to prepare a form of government and a code of laws, to be reported to an adjourned meeting a month thereafter. He faithfully performed the duty, and his reports were unanimously adopted. The new government had three branches—the legislative, executive, and judiciary. The legislative consisted of a national committee and a national council elected for one year; the executive, of a principal chief and an assistant principal chief, who was *ex officio* President of the Council, both elected for four years; the judiciary consisted of a supreme court, circuit, and district courts, the judges of the supreme and circuit courts chosen by the council for four years, and the judges of the district court for one. The laws then enacted were few, simple, and plain, well adapted to the condition of the western Cherokees. The government went immediately into operation.

Takatoka had been principal chief of the western Cherokees, from 1813 to 1818, when Tolontiskee, who emigrated under the treaty of 1817, arrived in the country, and was recognised in that character by the Government of the United States. His authority was reluctantly acknowledged by Takatoka and his adherents. Tolontiskee died not long after his removal, when competition for the chieftainship arose between Jolly, his lineal descendant, and the old chief Takatoka. Jolly, however, prevailed; and being recognised by the United States, continued in that position until the establishment of the new government in 1824. He was then elected principal chief, and Takatoka assistant principal chief. On the death of Jolly, John Brown was elected, and at the next election the choice of the people fell upon John Rogers, your memorialist.

Under this government the people were prosperous and happy. The laws were firmly and impartially administered. Schools were established by the missionaries, and knowledge and the Christian religion were advancing among us. We were at peace with all the surrounding tribes, and scarcely an instance of violence occurred between our people and the white men on our eastern frontier.

As early as 1815 the Cherokees west complained of the annoyance occasioned by the intrusion of white men among them, and besought the Government to apply an effective remedy. Prior to 1828 multitudes had settled in their vicinity, and it became apparent that a new State must soon be created in the territory of Arkansas. In that view, the United States became anxious to push us farther west, that the country we then occupied might form a part of the proposed State, free from the occupant right of any Indian tribe. The wishes of the President having been made known to the western Cherokees, they sent a delegation to Washington, of whom your memorialist, John Rogers, was one, for the purpose of negotiating some satisfactory arrangement; and the treaty of 1828 was the result. Please mark who were the parties to that treaty. They are, "James Barbour, Secretary of War, being especially authorized," &c., and "the undersigned chiefs and head men of the *Cherokee nation of In-*

dians west of the Mississippi, they being duly authorized and empowered by their nation."

Does it require any argument to prove whom this "nation" did or did not embrace? Is there a pretence for alleging that the Cherokees east gave any powers, or joined in giving any, to these chiefs and head men? Were they not *every one* from the Arkansas, and did they not derive their powers from the *Cherokees on the Arkansas, and from them alone*? Here, then, we find the United States recognising and treating with the Cherokees west, as an independent Indian nation, disconnected from the Cherokees east of the Mississippi.

What is the *subject* of this treaty? It is the lands which by the treaty of 1817, were given to "*that part of the Cherokee nation on the Arkansas,*" in exchange for their interest in the Cherokee lands east of the Mississippi. In addition to the explicit language of the grant, vesting the western lands exclusively in the western Cherokees, we here find the United States, eleven years afterwards, recognising that exclusive right, by entering into a negotiation with the western Cherokees, to part with it, without consulting the Cherokees east.

No room is left for the argument or assumption, that, prior to the treaty of 1828, the Cherokees east had any right, title, or interest whatsoever, in the western Cherokee lands, or that the right of the western Cherokees was not as complete and exclusive as that of any other Indian tribe within the limits of the United States. It was as the *exclusive* owners, that the United States approached to purchase their title in 1828. They succeeded in making the purchase; and what did they give us by way of consideration? They paid us *partly in land and partly in money*. That portion of the consideration which was paid in lands, is described in the second article, as follows, viz:

"The United States agree to possess the Cherokees and to guaranty it to them forever, and that guaranty is hereby solemnly pledged, of seven millions of acres of land, to be bounded as follows," viz: [Here the boundaries are described. The article then continues:] "In addition to the seven millions of acres thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their rights of soil extend."

This was *a part* of the consideration. The balance is provided for in the fifth article, which commences as follows, viz:

"It is further agreed, that the United States, in consideration of the trouble attending the removal, and *on account of the reduced value of a great portion of the lands herein ceded to the Cherokees, as compared with that of those in Arkansas which were made theirs by the treaty of 1817, and the convention of 1819*, will pay to the Cherokees immediately after their removal, which shall be within fourteen months of the date of this agreement, *the sum of fifty thousand dollars,*" &c., &c.

"It is further agreed by the United States to pay *two thousand dollars, annuities*, to the Cherokees, *for ten years*, to be expended under the direction of the President of the United States, in the education of their children, in their own country, in letters and the mechanic arts; also, *one thousand dollars* towards the purchase of a printing press and types," &c.

Other provisions are made in the same article for the benefit of the nation and of its principal men: and the sixth article provides that "*when they may wish to lay off their lands, and own them individually, a surveyor shall be sent to make the surveys at the cost of the United States.*"

The land, money, and privileges, offered by the United States, as an

equivalent for their possessions, were accepted by the western Cherokees, as set forth in the seventh article of the treaty, which reads as follows, viz :

"The chiefs and head men of the Cherokee nation aforesaid, for and in consideration of the foregoing stipulations and provisions, do hereby agree, in the name and behalf of their nation, to give up, and they do hereby surrender to the United States, and agree to leave the same within fourteen months, as herein-before stipulated, all the lands to which they are entitled in Arkansas, and which were secured to them by the treaty of the 8th of January, 1817, and the convention of the 27th February, 1819."

Now, who were the *parties* to this treaty? The "*United States*" on the one side, and "*the Cherokee nation of Indians west of the Mississippi*" on the other; a *nation* which had existed there for thirty to forty years, and had been ten years before recognised and established as a separate community by your government; a nation organized under a written constitution and with written laws; the legislative, executive, and judicial branches of its government completely developed, and in full operation. Not an eastern Cherokee had anything to do with it.

What was the *result* of the treaty? The United States purchased the western Cherokee lands of the western Cherokee nation, and paid for them in part with other lands, and in part with money. The Cherokees west were immediately put in possession of the lands acquired in exchange, and the cash part of the consideration was paid to them as it became due. No eastern Cherokee ever conceived that he had a right to any part of *the lands or the money*; and if the United States had paid two-thirds of the fifty thousand dollars and of the annuities to the Cherokee nation east of the Mississippi, the whole world would have exclaimed against it as a wrong and an outrage.

Still another treaty was made by the United States with the "Cherokee nation of Indians west of the Mississippi." It was found that the limits assigned to them by the treaty of 1828 conflicted with the limits of the country previously ceded to the Creeks, in consequence of which it became necessary to re-adjust the boundaries. This object was accomplished by a treaty held at Fort Gibson, on the 14th of February, 1833. The only provision of the treaty which had a bearing upon the *title* of the western Cherokees to their lands, is at the conclusion of the first article, where it is provided, that "*letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed.*"

Let us now recapitulate, and see in what attitude the western Cherokees stood after the treaty of 1833.

Their emigration to Arkansas commenced soon after the conclusion of the treaty of Hopewell in 1785; and they had acquired a right of occupancy to an indefinite extent of country before the United States themselves had a title of any sort to the country in which they resided.

In 1808, a part of the Cherokees east proposed to join them, surrendering a portion of the country then occupied, on condition that the United States would give them, in Arkansas, a tract equal to that surrendered; and their proposition was acceded to by the President.

In 1817, that proposition was reduced to a formal agreement by treaty. The common property of the Cherokees east was divided between those gone and going west, and those remaining east, and the portion belonging to the former was ceded to the United States.

In exchange for the lands thus ceded, the United States gave to the

Cherokees gone and going west, the same quantity of land on Arkansas and White rivers, west of the Mississippi.

When, in 1828, the United States became desirous to repossess themselves of the lands ceded to the western Cherokees by the treaty of 1817, they negotiated another exchange with us for lands farther west; and in consequence of the reduced value of those lands, gave us an additional consideration of fifty thousand dollars, on removal, with sundry annuities and other benefits and privileges, promising us in 1833 a patent for the lands last ceded.

From their earliest settlement in the west, the Arkansas emigrants had managed their own affairs without the interference of their eastern brethren. They carried on war and made peace. They defended their possessions without the assistance of the eastern Cherokees or the United States. They increased in numbers and intelligence, advancing from the rudest state of savage life, through the different grades, to a regular government and written laws; and in 1833 were rapidly approaching the highest stage of civilization. To maintain that they were not a separate people, is to contradict incontestible facts; to deny that they had an exclusive property in the country they occupied, is to blot out the plain provisions of three solemn treaties, and overturn all the rules of right which the Great Spirit has prescribed for the government of man.

With grief for the wrongs and the sufferings of our people, we now approach the history of 1835, and subsequent years. Near the setting sun, we heard with sorrow and affliction of the oppressions endured by our brothers near his rising. As well before the treaty of 1828 as afterwards, we received with pleasure such of them as voluntarily left the home of our fathers, and sought refuge and protection in our peaceful regions beyond the father of rivers. We did this as a matter of kindness and favor on our part, not as the concession of a privilege which they had a right to demand. It was the western Cherokees, not the eastern, who bought and paid for the Cherokee lands west of the Mississippi. We sold our common property in the Cherokee country east, and with the proceeds purchased the country west. It would have been unreasonable for those who retained their interest in the east, afterwards to sell that interest for their own benefit, and then claim to be admitted as equal owners with us of the lands we had purchased without their assistance. The emigrants under the treaties of 1817 and 1819 were all registered; but between that date and 1835, many Cherokees not registered joined us in the west, not one of whom added an acre to our territory, or paid any consideration for being admitted to all the rights and privileges of freemen in the Cherokee nation west of the Mississippi, including an interest in our lands. But none of them could claim, or did claim, this privilege as a *right*. It was sought as a favor, and accepted as a favor. It was one which the western Cherokees could have withheld in any or every case, according to their own view of the policy of their nation.

Bearing in mind the rights of the western Cherokees to their country, as purchased by their own means, and guaranteed by solemn treaties, permit us now to call your attention to the treaty concluded at New Echota, with part of the Cherokee nation east, in December, 1835. The parties to this treaty are represented by its caption to be the "United States" and "the chiefs, head men, and people of the Cherokee nation." Not a

western Cherokee was among these "chiefs, head men, and people." They were exclusively eastern Cherokees. Yet this treaty, in its preamble, coolly assumes, that *our* country west was "selected by *their* forefathers," and in the second article recites the boundaries of the lands guarantied to *us* by the treaties of 1828 and 1833, as showing the extent of *their* country west of the Mississippi, and, in tender consideration that *our* lands might not afford them *sufficient room*, sells them 800,000 acres more for half a million of dollars. The treaty then provides for the removal of the whole Cherokee people east to *our* country in the west, at the expense of the United States, and for their subsistence there for one year, or until they should be able to make a living from *our* fields or *our* hunting grounds. The rights of the western Cherokee were totally forgotten. It was forgotten that he had purchased and paid for the country he occupied. It was forgotten that he had there a regular government with written laws. It was forgotten that he had been recognised and dealt with as an independent tribe. Contrary to the fact, as it appeared on the face of the treaties of 1817, 1828, and 1833, it was assumed that when he was dealing for *himself* he was dealing for *the Cherokees east*; that when he purchased lands with his *own means* he bought them for *their benefit*; that all his toils and dangers in exploring and settling a new country, in fighting the Camanche and the Osage, in stipulating for annuities, blacksmiths, and teachers, were not to secure a home and a name for *himself* and *his posterity*, but to provide for any horde which the United States might send in to seize and enjoy the noble possessions which he had conquered by his arms, purchased with his money, and improved with his hands. It was even forgotten that if the Cherokee lands west were common property, the Cherokee lands east were common property also; and while the eastern Cherokees are precipitated into *our* country and made joint owners with us in *our* lands, we were not to receive any portion of the consideration for which they had sold their own. In the fifteenth article it is declared, that, after making certain specified deductions, the balance of the purchase money given by the United States for the Cherokee country east, "*shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed, and such Cherokees as have removed west since June, 1833.*" &c.

Thus, while it is assumed that the Cherokee country west is the common property of all the Cherokees, it is practically denied that the lands east were common property in like manner. The Cherokee people east are thrown upon us to enjoy *our* lands in common, and, at the same time, are permitted to sell their own, and divide the money among themselves. Though on the division of the common property, in 1817, we supposed we had the same kind of interest in *our* portion that they had in theirs; that we had no remaining claim in their half, nor they in ours; yet in 1835, it is discovered, that while we lost *our* common right in *their* portion, *they* retained their original claim in *our* portion, that they might, without any outrage upon us, enrich themselves by the sale of their *own* country, and then *take possession of two-thirds of ours*.

Surely such a position, if not puerile, is untenable and unjust. As well might the United States have bought out the Cherokees west, and sent them back with the money in their pockets, to enjoy in common with the eastern Cherokees, the remnant of their original country, without returning the consideration they had received for their own due proportion.

In this extraordinary transaction, your government forgot not only the rights of the western Cherokees, but its own solemn obligations. As an inducement to us in 1828 to sell out our valuable possessions in Arkansas, the United States agreed not only to convey to us seven millions of acres of land, but promised *to guaranty it to us forever*; “and, (says the treaty) *that guaranty is hereby solemnly pledged.*”

In the treaty of 1833, it was again stipulated that “the United States agree to possess the Cherokees, and *to guaranty it to them forever, and that guaranty is hereby solemnly pledged,* of seven millions of acres of land;” and to make the promise more imposing, it was added, “and *letters patent shall be issued by the United States, as soon as practicable, for the land hereby guarantied.*”

These were the *promises and solemn pledges* of your government to the western Cherokees, with whom alone those treaties were made. The patent was *not* issued “as soon as practicable;” and in less than three years, the solemn pledge to us was so entirely forgotten, that your government, in a treaty with another people, sold them 800,000 acres of land, and agreed to convey it to them and their descendants, “by patent in fee simple.” and at the same time stipulated that *our* lands, defined and guarantied to us by the treaty of 1833, including the outlet west, *should be included in the same patent*!

The western Cherokees heard with astonishment that the United States had, without even asking their consent, given to their eastern brothers the lands sold to them and solemnly guarantied as their everlasting inheritance. Trusting, however, to their father to make them due reparation, they resolved to receive their eastern brothers in all kindness, and make them as happy as they could in their new homes. One after another, that class of eastern Cherokees, called the treaty party, came among us, settled upon our lands, submitted to our laws, and became members of our community. We need not remind you how John Ross and his associates persuaded a majority of the Cherokee nation east to disavow the treaty of 1835, and refuse to abandon their country; and how the army of the United States was sent among their mountains, to collect and force them to go at the point of the bayonet. But we *must* fix your attention upon the inconsiderate, unjust, and cruel policy, which, to save trouble to the executive or to the army of the United States, committed the management of the movement to the hands of those who had opposed it from the beginning. Among Indians not less than white men, money is power. You gave Ross money, and in doing so, gave him power. You trusted and honored him, by making him your agent: you made all the common Indians look up to him as *worthy* to be honored and trusted. You gave him means to secure the avaricious and corrupt, to imbode the ignorant and the wicked, to purchase weapons, and pay assassins.

On the 1st of August, 1838, before the eastern Cherokees under Ross started for the west, they held a council at Aquohee camp, at which they adopted sundry resolutions, among which was the following, viz:

“And whereas the Cherokees have existed as a distinct national community, in the possession and exercise of the appropriate and essential attributes of sovereignty for a period extending into antiquity beyond the dates and records and memory of man:

“And whereas these attributes, with the rights and franchises which they involve, have never been relinquished by the Cherokee people; but are now in full force and virtue:

“And whereas, the natural, political, and moral relations subsisting between the citizens of the Cherokee nation, towards each other and towards the body politic, cannot, in reason and justice,

e dissolved by the expulsion of the nation from its own territory, by the power of the United States Government:

"Resolved, therefore, by the national committee and council, and people of the Cherokee nation in general council assembled, That the inherent sovereignty of the Cherokee nation, together with the constitution, laws, and usages of the same, are, and by the authority aforesaid are hereby declared to be, in full force and virtue, and shall continue so to be in perpetuity, subject to such modifications as the general welfare may render expedient."

This instrument was signed by *Richard Taylor*, President of the national convention, *Going Snake*, *Speake* of the council, and a committee in behalf of the whole people.

With this declaration, though then unknown to the western Cherokees, Ross and his adherents commenced their journey to Arkansas. They looked upon themselves, not as ordinary emigrants, but as a *nation* moving, carrying with them sovereignty, a constitution, laws, usages, and all the officers of an organized community.

Looking upon them as we had done upon the individuals of the treaty party who had already incorporated themselves into our society and been admitted into the enjoyment of all the privileges appertaining to a western Cherokee, we prepared to receive them in all kindness, and allow them to become one with us. After their arrival, a council was called to welcome, to recognise them as citizens, and to declare that all the honors and offices of the country should be open to them at our next elections, which were but a few months distant.

When the council met, we found, to our astonishment, that the newcomers claimed to be an organized community, having all the attributes of sovereign power *in*, if not *over*, the region embraced under the jurisdiction of the western Cherokee government.

The same national committee, with Richard Taylor as their President, and the same council, with Going Snake as Speaker, which had governed the Cherokee nation east, with John Ross as principal chief, were seen organized on the soil belonging to the Cherokee nation west, exercising the powers of an independent government. They were not content to be received as citizens of the western community, with all the rights and privileges of natives, although by the power of their numbers they could have altered it to suit themselves in less than a year.

Nothing would satisfy them but the immediate abrogation of the existing government, and a new organization, which should give them at once absolute dominion over the country. Their organized council made to our council a proposition to that effect, one condition of which was, that the respective laws "and authorities of the eastern and western Cherokees shall continue to be exercised and enforced among themselves, until repealed, and the new government, which may be adopted, shall be organized and take effect," &c.

We cannot so well express the views of the western Cherokees as by copying the brief and explicit answer which their council returned to the usurping government which they found by their side. It is as follows, viz:

"The national council has taken up your propositions of June 13th, 1839, and given them due consideration. You state that your wishes are to unite the people. As to that matter, it is believed by the national council that the two people have already been united. Our chiefs have met their brother emigrants, and made them welcome in the country; they are, thereby, made partakers of all the existing laws in the country, enjoy the same benefits, and are, in every respect, the same as ourselves. Since our chiefs have made them welcome, they have come to the chiefs and taken them by the hand, and expressed great satisfaction with the manner in

which they have been received. This is sufficient to justify the belief, that the people are, in general, very well satisfied; consequently the national council cannot justify the course of keeping up the uniting question, merely to protract a debate, when the uniting of the people has already been fully and satisfactorily accomplished.

"As it respects your wishes for your original laws, created beyond the Mississippi, to be brought here, brought to life, and to have full force in this nation, it is believed by the national council that such an admission is and would be entirely repugnant to the government and laws of the Cherokee nation, which would thereby create great dissatisfaction among the people. To admit two distinct laws or governments in the same country, and for the government of the same people, is something never known to be admitted in any country, or even asked for by any people."

This was on the 14th of June, 1839. Finding the Ross party determined to persist in asserting their independence, the council of the western Cherokees adjourned, and its members returned to their homes, not doubting that the United States would, in case of necessity, compel the new-comers to submit to the established government, until it should be legally and peacefully altered to suit them.

Ross's usurping council remained in session, and, on the 19th of June, resolved "that the declarations of the general council of the nation, at Aquohee camp, on the 1st day of August, 1838, in reference to attributes of sovereignty derived from our fathers, be and they are hereby reasserted and confirmed."

But the usurpers were not content to govern *themselves* in quiet, in a country already under another government, extraordinary as that pretension was. They determined, by bloodshed and revolution, at once to overthrow the established government, and take all power over our territory and our people into their own hands.

In reply to our letter they had said: "To the assertion made in that communication, that '*it is believed by the national council that the two people have already been united,*' we are compelled to refuse our assent;" yet they proceeded to act upon the very assumption they denied. After the western Cherokee council had adjourned and retired from the ground, the adherents of Ross held an irregular meeting, and, on the 20th of June, adopted a resolution for calling a general convention of the people of the eastern and western Cherokees, at Illinois camp-ground, on the 1st of July then next ensuing; as if a majority of the two people, united in convention, had power to abrogate the established government and constitute another.

The western Cherokees believed that their government could not be abrogated or superseded without the consent of a majority of their *own people*, uncontrolled by interference from those who did not recognise its authority; and such they supposed to be the principle which prevailed in the United States. But Ross and his friends regarded no principle; power was their object, and that *forthwith*. The character of the means to be used was of no consideration. Having resolved on their convention, they determined, also, that no bold and honest Cherokee should raise his voice therein to thwart their designs. From the very council ground where the call for it was made, issued three bands of assassins, organized for the express purpose of murdering the two Ridges and Boudinot, who had already become western Cherokees, and whose opposition was most feared. Each of the three bands, on the 22d June, executed its fell purpose under circumstances of peculiar atrocity, and, in one day, three of the most gifted Cherokees were numbered with the dead.

After this significant demonstration, it may well be conceived that no western Cherokee, and no member of the treaty party, unless previously secured to the interest of Ross, would dare to show himself at the Illinois camp-ground on the 1st of July. As was intended, the national convention was composed almost exclusively of the Ross party. There were, indeed, a few of the western Cherokees, who were induced to meet the bloody usurpers, and aid them in the consummation of their work; but their number was too small to deceive the most unsuspecting.

In the mean time, the treaty party and a portion of the old settlers had taken up arms, and were near Fort Gibson. General Arbuckle, then in command of the post, invited all the chiefs of both parties to meet him there, in the hope of devising some means in concert, to prevent the further effusion of blood. Ross declined attending. When our principal chief arrived, he found there the western chiefs, Brown and Smith, and the chiefs of some of the neighboring tribes. The former were in favor of instant war, and the latter promised us three thousand warriors to aid in putting down the usurpation of the strangers. In twenty-four hours, we could have mustered from three to four thousand well-armed warriors, and in three days could have exterminated the Ross party, not one in ten of whom then had arms of any sort. Our people were eager for the onset. When our principal chief arrived among them, their plans were already completed. They intended, with our allies, to rush suddenly upon the camp-ground of our enemies, to disperse and pursue them in every direction—killing all the men, but saving the women and children. The voice of our principal chief alone was wanting to let loose the storm, and sweep the usurpers and assassins from the face of our country. He could not but acknowledge the *justice* of the course contemplated by our warriors; but when he considered that it was our *brothers'* blood we were about to shed, and contemplated the misery it would bring on their wives and children, his heart sunk within him. Encouraged by General Arbuckle to expect justice and protection from the United States, he advised our people to postpone their vengeance, and, if we could form no arrangement with the Ross party, appeal to our great Father for relief. We thanked our neighbors for their tender of aid, and they left us with assurances of support, if we should require it thereafter.

At the request of General Arbuckle, and Mr. Stokes our agent, our western chiefs, on the 28th of June, made a proposition to the chiefs of the eastern Cherokees, for a convention of an equal number of leading men from both branches of our people, to be held at Fort Gibson, at some early day, for the purpose of uniting the two communities into one, and agreeing upon a basis of a common government.

This advance was rejected by the Ross party, who persisted in holding their one-sided convention. To signify to all concerned that the shedding of our blood was no crime, that convention passed a decree pardoning the murderers of the Ridges and Boudinot. They did not stop at legalizing murder, but proceeded, by another decree, to denounce as outlaws both the dead and the living who had an agency in forming the treaty of 1835, and then offered pardon to the survivors only on the condition of abject submission within eight days; even then excluding them forever from office, unless restored to their privileges by decree of the council. At the same time and place, a few of the old settlers, who had been induced by the money and power which the United States had put into the hands of

John Ross, joined him in his bloody and revolutionary measures, held a meeting and adopted resolutions formally deposing John Brown and John Rogers, chiefs of the western Cherokees—thus assuming to put an end to the western government.

Having thus removed the principal chiefs of the treaty party by death, and those of the western Cherokees by a mock deposition, the murderers and usurpers proceeded, in the name of all the Cherokees, to adopt an act of union, and form a constitution for the government of the Cherokee nation.

A government thus established could not, of course, be recognised as obligatory by the western Cherokees, or by the treaty party, or by the United States. The western Cherokees were told by the United States officer in command at Fort Gibson, that the government of the western Cherokees continued to be the only legitimate authority in that country, and we were promised protection and support until it should be abolished with the consent of the governed. With these assurances we were amused, and induced to make various propositions, while our enemies, evading every demand which the United States made on them, were fortifying their usurped power, and organizing an army to sustain it.

On the 20th of December, 1839, the United States agent for the Cherokee nation, in conjunction with the chiefs of the Ross party, agreed to invite all branches of the Cherokees to meet at Talequah, on the 15th of January, 1840, with a view to establish a government upon the will of the majority of all the people of all parties. The chiefs of the western Cherokees were not consulted in this movement, and their adherents, almost to a man, declined attendance. A meeting was, however, held, purporting to represent both the eastern and western Cherokees, which, of course, ratified and confirmed the usurpations of the preceding year, the act of union, constitution and laws—only revoking, at the earnest solicitation of the United States agent, the decree of outlawry issued by the former convention. The Ross party themselves claimed but one hundred and fifteen old settlers as being in attendance upon this convention, and, in fact, there are believed to have been but thirty-five.

Other nugatory attempts were made to bring about the desired union, until at length General Arbuckle, to whom the government of the United States had committed the task of settling the Cherokee difficulties, invited deputations of twenty-five to thirty of each party to meet at Fort Gibson, on the 15th June, 1840, and a meeting was accordingly held. What took place on that occasion is thus described by the General, viz :

“The emigrants at first presented to the old settlers the act of union entered into last summer or fall, and the enclosed constitution for their acceptance. This they declined to comply with. The emigrants declared that they had no authority to alter the constitution. I, therefore, prevailed on the old settlers to accept it, without admitting its legality, until concurred in by them; and urged the emigrants to enter into an act of union with the old settlers. These propositions were finally agreed to in the manner shown by the accompanying papers.”

Postponing to a subsequent part of this exposition, a critical examination of the circumstances which attended this transaction, it is sufficient here to remark, that those who assumed to act on the part of the western Cherokees, had no authority from our people to dissolve their Government and extinguish their national existence, nor was their act ever ratified by the people; that the delegates representing the eastern Cherokees had no power to enter into the stipulations which that act contains; that none

of the provisions for the benefit of the western Cherokees, were carried into effect; that the usurping government of 1839 continued in operation without change, and utterly irrespective of this act; and that both parties, by common consent, instead of taking measures to carry it into effect, treated it as null and void, and have continued to do so down to this day.

But that act, dead as it was in morality and law from its very birth, was converted into an instrument of destruction to the western Cherokees and the treaty party. The Government of the United States, which was not a party to it, without the least inquiry into the authority of those by whom it was concocted, seized hold of it as a justification for recognising the Ross usurpation as the legitimate government, poured all the funds of the nation into the hands of his adherents, and delivered over the old settlers and treaty party to their tender mercies, while the unatoned-for blood of the Ridges and Boudinot yet cried aloud from the ground for justice and for vengeance. From that day to this, has cruel oppression, like an ever-running stream, deluged our once happy land, until, to save their lives, its ancient occupants and rightful owners are compelled to fly to the hills and the mountains. You disarmed us with promises of justice when we were strong enough to seize it; and now, without a government or a country, we sue to you from year to year, and thus far in vain, to protect us from the cruelty of those whom, without a fault on our part, you have encouraged and strengthened and armed to destroy us.

What is the plea upon which this Government looks quietly on, sees those whom it has used to make advantageous treaties murdered with impunity, and beholds the western Cherokee, whom it is bound by its plighted faith to protect, stripped of his lands, of his improvements, of his government, of his liberty, of everything but his life?

Your Indian Commissioner tells you that the division of the Cherokee nation, in 1817, 1819, was *no* division; that the lands then given to the western Cherokee were *not his own*; that he never was, in fact, independent of the eastern Cherokees; and that all the country he called his *was*, in truth, the common property of the Cherokees east and west, who have now but entered into a common possession and established a common government.

But lest we should be thought to misrepresent the honorable Commissioner, we will quote his own language.

In a document recently communicated to the Senate by the Secretary of War, after adverting to the treaties of 1817 and 1819, the Commissioner says:

"So far, perhaps, there is some ground for the allegation, that the Cherokees west owned the land beyond the Mississippi; but even that it might be difficult to establish, as there was no restriction upon emigration, and the evident object of the Government was to encourage it."

Again:

"It therefore seems to me, that the western Cherokees were only contingently a separate community from the eastern body of these people. They were subject to increase by the emigration of those east, who, according to the construction I put upon the various instruments and acts recited, were to fall into the body they joined west, and become a part thereof. They are not, consequently, a separate independent community; nor have they any ownership of the land except that which belongs to them in common with the whole Cherokee people."

It is hard for the Indian to understand the white man's reasoning. The Indian sees the Englishman, the Scotchman, and the Irishman emi-

grating from the east, and "falling into the body of your people," and "becoming a part thereof;" yet he supposes the United States to be a separate, independent community, owning, not only the appropriated soil, but your public lands, otherwise than in common with the whole British nation.

But if the Commissioner's reasoning be correct, the United States are but "contingently" a separate community, because "there is no restriction upon emigration;" and inasmuch as Englishmen, Scotchmen, and Irishmen, may fall in upon them and become a part of their body politic, they do not own their public lands, except in common with every Englishman, Irishman, Scotchman, German, and everybody else on the face of the earth. The Turk, the Hindoo, and the Chinese, according to this reasoning, are owners in common with you, at least of your public lands, for "there is no restriction on emigration."

But we pray the unprejudiced inquirer after truth to look back to the treaties of 1817 and 1819, and see whether their palpable object was not to divide the Cherokees into two communities; and not only so, but to *make a final division*. Look at the *reason* for these treaties, as set forth in the preamble to the first. A part of the nation wished to remain in the hunter state, and a part to adopt civilized habits—two conditions of mankind in a great degree incompatible with each other in the same community. What was proposed? Why, one party proposed to have a line drawn between the upper and lower towns. For what purpose? *To divide the nation into two communities*; one of hunters, and the other of civilized men. What did the other party propose? Why, instead of forming a separate community where they then resided, they proposed to surrender a portion of the country then held by them, and receive an equivalent in Arkansas, where, in fact, a separate community already existed. To this the Government agreed. And how were the details to be arranged? Every step shows the design to have been a *final separation, then to be completed*. A census was to be taken of those west and going west, and those who chose to remain; by that census the common property was to be divided, those west taking their share according to numbers, and those east retaining their share according to numbers. It was a plan of separation, *perfect in all its parts*, to be executed *forthwith*, and it *was* executed. The treaty of 1819 altered the details, but did not, in the least, change the end to be attained.

If, as the Commissioner says, "it was the evident policy of the Government to encourage emigration," those treaties do not show it. On the contrary, they provide only for *one general emigration* of all who chose to remain hunters, and held out powerful inducements, by liberal reservations, to all who preferred civilized life to remain where they were, and become citizens of the United States. The plan of a *continuous* emigration, with the view of transplanting the whole tribe to the West, was of subsequent date, and was *inconsistent* with the policy developed in the treaties of 1817 and 1819.

The language of the treaty of 1817 corresponds with its inducement and design, as herein set forth. The 5th article binds the United States "to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have or may hereafter receive from the Cherokee nation east of the Mississippi, acre for acre." To them, and to nobody else, it was accordingly given. But according to the honorable

Commissioner's reasoning, that which was *expressly and exclusively given them was not their own*. True, "there was no restriction on emigration," east or west. The western Cherokees had as much right to emigrate east as the eastern Cherokees had to emigrate west. Will the Commissioner admit that, after division of the common property in 1817, the western Cherokees had a right to sell their lands in Arkansas, put the money in their pockets, and return east, to enjoy in common the lands which had been left to their eastern brothers? There was no *restriction* on emigration. The eastern Cherokees were only "contingently a separate community"—only upon the contingency that their brothers did not sell out their possessions in the west, and come back again. Precisely the same contingency, and no other, attended the Cherokees emigrating west.

But is this emigration a matter of *right* or of *favor*? Has an Englishman, a Scotchman, or an Irishman, a right, independent of the will and permission of the United States, to come within their borders, and become a citizen entitled to all the privileges of the native born? Cannot the United States, whenever they please, forbid their landing on their shores, and deny them all the rights of citizenship? It cannot be doubted. You leave emigration open to the whole world, that your oppressed brethren of the east may find among you liberty and happiness. You take them by the hand, and make them your equals—equals in personal and civil rights and privileges, and equal owners in the common property of the nation. You exhibit this kindness, not because you are *bound* to do so, but because it is your *will and pleasure*, as an independent nation. Just so it was with the Cherokees east and west after the treaty of 1817. Except those who were enumerated, emigrated under the treaty, and brought with them their due proportion of land, the western Cherokees were not bound to receive a single emigrant from the east by or under that treaty. But, like you, they had brothers in the east, who were subjected to wrong and oppression. These, as they came to their peaceful land, they received with open arms, as redeemed ones, and admitted them at once to all the rights of citizens, under their mild and paternal government. But they never imagined their eastern brothers could claim this admission and these privileges *as a right*. We never imagined they could sell out the share of the common property assigned to them in the division of 1817, and, without adding anything to our stock, intrude upon our share, and enjoy it in common, without our consent.

To test the principle involved in this matter, let us put a case: Suppose the honorable Commissioner and Capt. Rogers own a large tract of land in common upon which they reside; the Commissioner wishes to be a farmer, and the Captain desires to be a hunter; they agree to divide their land; the Captain exchanges his share for forest land in a distant State, where he goes and settles, while the Commissioner remains at the old place. Can the Commissioner, some seventeen years afterwards, sell out his part of that place, and, as a matter of right, come and settle on the Captain's land? Will it avail him to say that there is "no restriction upon emigration," or that the property was to remain separate only upon the *contingency* that he did not choose to *keep all his own share and take half of the Captain's*? White men may make such laws for the Indians; but never for themselves.

If there be anything unequivocal in the white man's language, the treaties of 1817 and 1819 were designed to make, and did make, two separate

communities, with separate property and distinct governments, as independent of each other as any other two Indian tribes within the limits of the United States. A gradual emigration was, however, constantly going on from the east to the west, of a character precisely like that which passes from Europe to America.

This was the state of things when the United States became desirous to push the western Cherokees farther west, for the purpose of making room for a new State west of the Mississippi. We had four or five millions of acres of prime land in the heart of the Arkansas valley, with the promise of a perpetual outlet west, made to us in 1818, and renewed in 1821. With the country in which we lived, and the outlet west, already our own by treaty or by promise, our father came to us and offered seven millions of acres farther west, and \$50,000 to boot, with other benefits, if we would give up our choice lands and remove farther towards the desert. We complied with his wishes, agreed to the treaty of 1828, gave up our chosen possessions, and retired beyond the limits of the territory of Arkansas.

This bargain, the honorable Commissioner says, is quite conclusive, that neither the land we swapped away, nor that which we got for it, was our own. He declares it to have been the common property of the eastern and western Cherokees, although no eastern Cherokee had, or considered that he had a right to have, any voice in the trade! Let us see to what this assumption leads. If the lands exchanged were *not* ours, then we sold that which did not belong to us, and the United States, with their eyes open, were purchasers of property fraudulently disposed of. The Cherokees east were as two to one to the Cherokees west, and the one-third could have no right whatsoever to dispose of common property by sale or exchange, without the concurrence of a portion at least of the other two-thirds. Will the Commissioner show us the commission, or power of attorney, or other authority which gave the western chiefs power to represent and act for the eastern Cherokees in this transaction? None ever existed. How, then, can his argument be sustained, otherwise than by the admission that the entire treaty of 1828, being negotiated with an undoubted and acknowledged minority, having no right to act for the whole, is a palpable fraud on the Cherokee nation? Does the Commissioner make this admission? If not, he *must* admit that the western Cherokees were a separate community, competent to give, and did give, a valid title to lands conveyed; competent to take, and did take, a valid title to lands acquired. They, and *they alone*, were the party selling the lands within the limits of Arkansas: they, and *they alone*, were the party purchasing lands farther west. If the United States did not recognise them in that character, the whole treaty of 1828 was a disreputable fraud on the Cherokee nation, and a large portion of the State of Arkansas is now their rightful property.

How does the honorable Commissioner get over the admission of the United States, that the western Cherokees were the exclusive owners of these lands, by dealing with them as such? He first quotes from the preamble of the treaty the declaration, "that it was the anxious desire of the Government of the United States to secure to the Cherokee nation of Indians, as well those now living within the limits of the Territory of Arkansas, as those of their friends and brothers who reside in the States east of the Mississippi, and who may wish to join their brothers of the

west, a permanent home," &c. What had "the anxious desire of the United States" in that behalf, to do with the independence of the western Cherokees, or their title to their lands? Nothing whatsoever. Yet it is readily admitted, that this passage in the preamble had reference to one of the objects of the treaty. What was that object? Not to divest the western Cherokees of their nationality, their government, or their lands. We find it in the eighth article. So far as regards the western Cherokees, its language is as follows, viz:

"The Cherokee nation west of the Mississippi, having by this agreement freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guaranty of the United States as contained in this agreement, a large extent of unembarrassed country; and that their brothers yet remaining in the States may be induced to join them, and enjoy the repose and blessings of such a state in the future."——

What then? Is this preamble (for it is nothing more) followed by a stipulation that, for some valuable consideration, they will continue to *receive* emigrants from the east *during all time and under all circumstances*, making them equal partakers in their common property and common rights? No such thing. It is followed by *no stipulation on their part whatsoever*. It is a mere declaration of the policy and good feeling in relation to their eastern brethren, which had actuated them from the time they first secured homes in the West, without adding to, or taking from one party or the other, a jot or tittle of the rights and powers they previously possessed. So far from admitting in this declaration that the eastern Cherokees had a right to their lands in common, the western Cherokees expressly deny it. They say, "*that having secured to THEMSELVES and THEIR POSTERITY a large extent of unembarrassed country,*" &c. The title to the country they declare to be in *themselves*; but they are willing their eastern brethren shall come over and enjoy it with them, as they had always been, not as a matter of right, but of favor.

There is not in that article or that treaty a single stipulation, or agreement, or intimation, on the part of the western Cherokees, which can be construed to take from them or limit the power to prescribe conditions to new emigrants, or to refuse to receive them altogether.

Let us now see what stipulation or agreement *actually did* follow this preamble or declaration.

The eighth article goes on to say:

"It is further agreed, on the part of the United States, that to each head of a Cherokee family now residing within the chartered limits of Georgia, or of either of the States east of the Mississippi, who may desire to remove west, shall be given, on enrolling himself for emigration, a good rifle, a blanket, and kettle, and five pounds of tobacco, (and to each member of his family one blanket;) also, a just compensation for the property he may abandon, to be assessed by persons to be appointed by the President of the United States. The cost of the emigration of all such shall also be borne by the United States, and good and suitable ways opened, and provisions procured for their comfort, accommodation, and support, by the way, and provisions for twelve months after their arrival at the agency; and to each person, or head of a family, if he take along with him four persons, shall be paid immediately on his arriving at the agency and reporting himself and his family, or followers, as emigrants and permanent settlers, in addition to the above, provided he and they shall have emigrated from within the chartered limits of the State of Georgia, the sum of fifty dollars, and this sum in proportion to any greater or less number that may accompany him from within the aforesaid chartered limits of the State of Georgia."

Here is no agreement on the part of the western Cherokees to do or not to do anything whatsoever. The only party which lays itself under any obligation, is the United States. That obligation is to the western Chero-

kees, the other party to the treaty; for it is absurd to say that an agreement can be made part of a treaty which does not bind one party to the other.

A little reflection will make plain the meaning and effect of this provision. The western Cherokees, having secured to themselves and their posterity an ample country, were desirous, as well from natural affection as to increase their strength and security, that their eastern brothers should join them. As a further consideration for the exchange of lands to be effected by the treaty, they obtain from the United States this stipulation, with the view of encouraging emigration. It is a part of the price which the United States agreed to pay them for their possessions in Arkansas. Any other construction makes the stipulation nugatory and absurd. It could not bind the United States to the eastern Cherokees; for they were not a party to the agreement. It could not bind the United States to *themselves*; for that would be absurd.

Let us illustrate the matter by a plain case: John Rogers has a tract of land, which James Barbour wishes to obtain by exchanging for it other lands. John Rogers comes to Washington, and they agree upon the outlines of a bargain. John Rogers then says to Mr. Barbour, "My brother, James Rogers, is in great distress where he now resides, and I am very anxious, as well on account of my natural affection for him, as to make me more secure in my new possessions, that he shall be induced to remove out and live with me. Therefore, in addition to what you have already agreed to do, you must further agree to pay his expenses, if he should think proper to remove." "Very well," says Mr. Barbour, "I will make a liberal arrangement with you in that respect, particularly as I am very anxious to get the land on which your brother now lives for some of my own family." So he sits down and writes another article to the agreement, somewhat in this form, viz:

"John Rogers, having by this agreement, freed himself from a disagreeable neighborhood, and secured to himself and his heirs forever, under the solemn guaranty of James Barbour, as contained in this agreement, a large extent of unincumbered land, and that his brother, James Rogers, still remaining in a very unpleasant location, may be induced to join him and enjoy the repose and happiness secured to the said John Rogers by this arrangement, 'it is further agreed,' on the part of the said James Barbour, that he will give the said James Rogers, if he shall desire to remove as aforesaid, a good rifle, a blanket, a kettle, and five pounds of tobacco, will pay his expenses, furnish him with provisions for twelve months, and give him fifty dollars in money."

Now, could Mr. Barbour, under such an agreement, insist that James Rogers was a joint owner with John Rogers in the newly acquired lands? Could he insist that John Rogers was absolutely bound to let James come and live with him, at any time thereafter, even if he had become his implacable enemy? Could he insist that he had a right to *force* James Rogers to remove, and *force* John Rogers to receive him as a common owner of his property?

This would be a palpable outrage on all justice and law. Yet it is precisely parallel with the *actual case* now presented under the treaty of 1828.

Although the eighth article palpably creates no obligation except upon the United States, being, in so many words, *an agreement "on the part of the United States;"* yet an obligation on the western Cherokees is conjured out of *its preamble*! It is insisted that this Government has a right to *force* on us what was *promised as a favor*, and to construe our kind expressions towards our eastern brothers into an irrevocable covenant to

let them take our property and cut our throats! Common sense, common law, common justice, and common humanity, cry out against a construction so unnatural and so monstrous.

The obvious and only rational construction of this article is, that the whole subject of emigration, so far as the western Cherokees were concerned, remained on the same ground that it did before. "*There was no restriction upon it;*" and to encourage it, with the permission and good will of the western Cherokees, the United States undertook to pay expenses and bounties to emigrants. But this could not, and did not, in the least degree, affect the rights or powers of the Cherokees east or west. All emigration was to be still *voluntary*—the eastern Cherokees were not obliged to emigrate, nor were the western Cherokees bound to receive them a moment longer than their own sense of duty required.

The United States had no rights in the case; they could not rightfully force the one to emigrate or the other to receive them. Failure of emigration, instead of being the violation of any *right* of the United States, only relieved them from an *obligation*.

But, for the sake of argument, let it be admitted that this stipulation is (what it is not) a *contract* on the part of the western Cherokees to admit and receive, then and forever, every Cherokee emigrant from the east, as a free citizen and joint owner of their property: What *kind* of emigrants were they to be? The preamble from which the Commissioner quotes describes them as those "*who may wish to join their brothers of the west.*" The eighth article also describes them as those "*who MAY DESIRE to remove west.*" They were *voluntary* emigrants, and none others. It was only emigrants of that class, only such as "*may be induced to join them,*" that the western Cherokees were willing, or, under any construction of the treaty, bound to receive. Its whole context not only does not authorize, but *clearly negatives* the assumption, that any other than *voluntary emigrants* were embraced in its provisions, or even thought of by the parties.

What does the honorable Commissioner attempt to justify or defend under his construction of these provisions? *The pushing of the whole Cherokee nation east into the country of the Cherokees west at the point of the bayonet!* Not more than three thousand of those people *voluntarily* emigrated to the west under your treaty of 1835. The great body of the nation, about twelve thousand in number, denied the validity of your treaty, and refused compliance with its provisions. Your money, your entreaties, and your threats, had no effect upon them. You sent your army to collect them together and *force* them over the Mississippi. They yielded only to force. At Aquohee camp and elsewhere, under the muzzles of your guns, they disavowed your treaty, declared themselves still a nation, asserted a right to the territory of which they had been dispossessed, called themselves a "*captured*" people, proclaimed that they were driven to Arkansas contrary to their will, and in violation of their most sacred rights. These declarations they repeated, time and again, after their arrival, and continue to repeat down to this day.

Can the honorable Commissioner lay his hand upon his heart and say that he believes an emigration of *this* kind was authorized or contemplated by the treaty of 1828? If he find plausible grounds to insist that the western Cherokees were obliged, under that treaty, to receive and incorporate into their community individual emigrants *voluntarily presenting*

themselves, with or without the sanction of the United States, can he maintain that they were bound to receive the *whole nation*, forced upon them at the point of the bayonet? I. John Rogers, am one of those whose signatures will be found attached to the treaty of 1828. I ask the honorable Commissioner, whether he believes that I would ever have put my name to that instrument, if I had believed that, under the kind feelings it exhibits towards my eastern brothers, I could rightfully be placed in my present condition; deposed from rightful authority, stripped of my property, my family dispersed, an exile without country or home, threatened with death, and not daring to set my foot upon the soil which the United States solemnly guaranteed to me and my people forever? Again, I ask, Did we, the western Cherokees, put our names to an instrument which, in its fair intent, just legal construction, and regular operation, could rightfully bring upon us all the wrongs, privations, and miseries, which we now endure? If we did, we were madmen, incapable of managing our own affairs; if we did not, then are we the victims of fearful wrongs, which cry to the Great Spirit for reparation, if not for vengeance.

Need we say more to obviate the strange construction which the Commissioner puts on the treaty of 1828? One illustration we will add: It is admitted, that every eastern Cherokee had the privilege of emigrating to our country, both before and after the making of the treaty of 1828, because emigration was allowed by the rightful owners and rulers of the Cherokee country west. In like manner, every Englishman, Irishman, and Scotchman, has the privilege of emigrating to your shores, because you choose to permit it. But has the British nation a right to sell their islands to France, and under cover of that privilege, throw their whole population upon you, with their king, lords and commons, to depose your authorities, overthrow your government, seize on your public domain, and drive you forth as exiles and outcasts from the land you and your fathers have purchased with your money, and defended with your blood? Or, suppose you had a treaty with *France*, in which she stipulates to pay the expenses of all emigrants to your shores from the British isles: Could she, under cover of that provision, buy those isles of their owners, or seize them by force, and thrust their inhabitants in mass into *your* country, to deprive you and your children of their rightful inheritance? When you complained that this assumption was converting a stipulation intended for your benefit into the means of your destruction, could France justify herself by coldly telling you, "*there is no restriction on emigration*," and it is *our policy to encourage it*—you never were, except "*contingently*," a separate and independent community! Yet such, and so monstrous are the results of the conclusions which the Commissioner draws from our treaties with the United States—results annihilating the people whom those treaties professed to protect, fence round and secure, under the most solemn guaranties which bind nation to nation and man to man.

The Commissioner uses one argument against the exclusive right of the western Cherokees which was believed to have lost its power with civilized and Christian men. He says, "it would seem there could be no doubt of the intention; for the seven millions would give every Cherokee west, (reckoning them at 6000,) man, woman and child, near 1200 acres of land; *which would be preposterous*." This was the language of the white man to the red, when one was a barbarian and the other a savage. The Spaniard, the Englishman, the Dutchman, and the Frenchman, said to the

Indian whose land they discovered, it is "preposterous" that you should have so much territory for so few people: *we will take it from you.* When your ancestors first smoked the pipe with the Cherokee, his possessions stretched from tide-water to the Ohio, and from the Kanhawa to the Mississippi. He owned perhaps the "preposterous" quantity of 5000 acres to every man, woman and child of his nation. But by conquest and treaty, the white man trimmed off his possessions to the right and left, and curtailed his limits until, perhaps, he had but 1200 left, which the grasping white man still considered a "preposterous" quantity. But what does the white man want with it? Has he not already millions of acres, which he cannot cultivate? With enough on this side of the continent to form empires, still unoccupied, except by Indians in "preposterous" quantities, he is reaching over to the Oregon, and securing enough for another empire there. If when you assert your claim, the British government should reply, You have already 1200 acres for every man, woman and child of your population, your claim to more is "preposterous:" what would be your reply? Could you say, as the western Cherokees can, *We have BOUGHT IT and PAID FOR IT?*

The Cherokee hopes that arguments like this have ceased to have effect. The only just inquiry is, not how much land we have, but, *is it our own?* Did we *come by it honestly?* If these questions be satisfactorily solved, it will not be taken from us without our consent, should we possess, not 1200 acres only, but 12,000 for every man, woman and child of our people. The Commissioner forgets that the western Cherokees, before you sent Ross among them, were rapidly increasing in numbers, not only by births, but by emigration. They looked forward to the day when their whole territory should be thickly occupied by an agricultural people, enjoying all the blessings which belong to civilized life. They had the same reason for desiring and possessing a large extent of unoccupied country that the United States have; not that it was of any immediate use to them, but because it promised an increase of national greatness and lasting happiness to their posterity.

To prove the exclusive property of the western Cherokees in their lands, we have already adverted to the fact, that the United States gave their original possessions in the west to *the Cherokees on the Arkansas* in express terms, palpably excluding the Cherokees east; that they bought those lands of the Cherokees on the Arkansas and paid those Cherokees in other lands and in money; and that in the eighth article of the treaty of 1828, on which the Commissioner hangs his principal argument, those lands are spoken of as "*secured to themselves and their posterity,*" excluding other owners of whatever class or nation. If all this could leave a shadow of doubt as to the exclusiveness of their title, it is chased away by the sixth article already quoted, which provides, that "*when they may wish to lay off their lands and own them individually, a surveyor shall be sent to make the surveys at the cost of the United States.*"

So complete and so exclusive was the title of the western Cherokees then considered, that their right to *divide the lands among themselves* was thus expressly and emphatically recognised. Suppose they had, in 1829, procured the division to be made, and each man had taken possession of his individual share, can it be maintained by the Commissioner, or any one else, that Ross and his horde could have come in ten years afterwards and dispossessed the occupants, or claim a new division? The idea is absurd,

so inconsistent is it with the obvious intent of the sixth article; yet, it must be recognised as reasonable and just if the eastern Cherokees possessed a common property in those lands.

We have treated the argument of the Commissioner as if the treaty of 1828 had actually enlarged the extent of country which the western Cherokees were before entitled to possess and enjoy. Such, however, is not the fact. The preamble of that treaty adverts to promises made to them in 1818, and confirmed in 1821, of a perpetual outlet west from their possessions in the territory of Arkansas. The first promise was in the form of a talk from the President to Tolontuskee and a delegation of emigrants under the treaty of 1817. The President said to them: "The country which you give up is a good country; and it is near and very convenient to us, and I shall in turn act generously towards you and endeavor to make you happy in your new homes on the Arkansas. I have not yet obtained the lands lying up that river to the west of your settlement. I will give instructions to Governor Clarke to hold a treaty with the Quapaws this summer, in order to purchase them; and when purchased, I will direct them to be laid off for you. It is my wish *that you should have no limits to the west*, and that you may have good mill-seats, plenty of game, and not be surrounded by the white people."

In July, 1821, our chiefs wrote to the Secretary of War, complaining that the promises of the Government in relation to intruders upon our lands, and to the outlet to the west, had not been performed; and received in reply, a letter dated October 8th, 1821, in which it was said: "Orders were given some time since for the removal of the whites from your lands and *from the tract of country to the west of your reservation, commonly called Lovely's Purchase, by which you would obtain the outlet promised.*" They were then told the orders would be repeated; and it was added: "It is to be always understood that, in removing the white settlers from Lovely's Purchase, for the purpose of giving the outlet promised you to the west, you acquired thereby *no right to the soil, but merely to an outlet*, of which you appear to be already apprized, and that the Government reserves to itself the right of making such disposition as it may think proper in regard to the salt springs upon that tract of country."

To carry these promises into effect was one of the avowed objects of the treaties of 1828 and 1833; the latter of which describes our title to the land embraced in the outlet as follows, viz:

"The United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend. *Provided, however,* That if the saline or salt plain on the great western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain, in common with the Cherokees."

Thus, the promise of 1818 was, that we should be "without limits to the west;" that of 1821 gave us a right to the exclusive possession of the outlet, with the exception of the salt springs, reserving the right of soil to the United States; the treaties of 1828 and 1833 gave us "the free and unmolested use," excepting the salt plain. The lands embraced in the outlet have been treated as Cherokee lands ever since.

To induce the eastern Cherokees to sell their possessions and emigrate, Mr. Schermerhorn, at the Council of Running Waters, on the 20th August, 1835, said to them: "The whole quantity of lands that you will now have

west, secured by this and other treaties, will be 13,800,000 acres." This quantity embraced the 7,000,000 defined in the treaty of 1828, the outlet found to embrace 6,000,000 acres, and 800,000 acres ceded by the treaty of 1835.

These evidences are conclusive, that from 1818 it was considered by the United States that the Cherokees had an exclusive right to the perpetual and unmolested use of all the lands included in the perpetual outlet, the salt springs excepted. In other words, those lands were as much *their own* as any others ceded by treaty, the difference in the title being merely nominal.

In this state of facts, what did the Cherokees gain by the treaty of 1828? Why, they exchanged their *own* lands in Arkansas for their *own* lands west of Arkansas! The United States took the lands which were in their *immediate possession*, and gave them in payment other land which were *already their own*. Every foot of the 7,000,000 of acres, apparently ceded to them in 1828 and 1835, was part of the *outlet* of which they were already entitled to the "*unmolested use*," by the solemn pledges of 1818 and 1821, backed by the expulsion of white settlers therefrom. In fact, all the valuable consideration the western Cherokees have received for their choice lands in Arkansas, was the \$50,000, and the other trifling benefits secured by the fifth article; and for the sales of those very lands, the United States have put into their treasury probably three or four millions of dollars.

Admit for a moment that the cession of 1817, 1819 was for the benefit of the whole Cherokee nation, as the Commissioner of Indian Affairs maintains: that cession, so intended, included not only our "acre for acre" grant in Arkansas, but an outlet west without limits, the whole amounting to seventeen or eighteen millions of acres. Without the consent of the nation, the United States took back, in 1828, over four millions of acres of this "common property," giving but a "pepper-corn" therefor, and that not to the right owners. Are they not bound in justice and good faith, now that the nation is reunited, to restore these four or five millions of acres to the Cherokee possessions, thus illegally taken from them?

This view is presented, not for the purpose of admitting the common right of the eastern Cherokees, but to make you appreciate more clearly what is due to the western. Happy would they be, were it possible, that only so much of their original possessions as was surrendered by the treaty of 1828 were now restored, leaving their guaranteed seven millions with the entire outlet in the quiet possession of their enemies.

Our argument has, we trust, already annihilated the assumption that the treaty of 1835, with a few of the eastern Cherokees, did no wrong to the western, by unceremoniously conveying to another people a country thrice guaranteed to them by solemn treaties. Nothing of it is left but the Commissioner's allusion to "the admissions of James Rogers and John Smith, delegates from the western Cherokees, appended to the treaty of 1835, on the 31st December." To us it is passing strange that the honorable Commissioner should refer to that appendage to the treaty with the obvious intent of conveying the impression that it had the authorized assent of the western Cherokees. For our surprise at this allusion, we find several reasons in the documents which the Commissioner himself has reported to Congress.

1. In Senate Doc. No. 120, 25th Congress, 2d session, page 378, is a

letter from the authorities of the western Cherokees to the United States agent, dated June 7, 1835, informing him that "the National Council, by the direction of the chiefs, have selected four delegates, Messrs. Joseph Vann, Wm. C. Coody, John Smith, and John Drew, who are instructed and authorized to go to the eastern Cherokees, and, if possible, to effect such arrangements as will unite the two people in one upon the Arkansas, and upon such principles as will be satisfactory to the eastern Cherokees," &c.

Among the delegates thus appointed will be found but one of those names which the Commissioner now quotes as appended to the treaty, and not a *shadow of authority* to the *true* delegation to affix their approval to any such arrangement.

2. At page 155 of the same document, it will be found that, on report of the appointment of this delegation to the Government, with an intimation that their views did not accord with those of the United States, their interference was denounced as unauthorized, and orders were given to examine the 13th and 14th sections of the intercourse act of 1834, to see whether they could not be legally arrested and sent out of the country.

3. At page 660 of the same document, will be found a note signed by John Smith one of the delegates in question, appended to a letter from the authorities of the western Cherokees to the chiefs of the treaty party east, objecting to the treaty; in which he says:

"Now you see from this letter what I told you all when you wished me to sign the treaty. I told you that I would sign it, though it was not agreeable to our instructions; and you would not agree to any of my propositions; you and our people can settle it yourselves hereafter."

4. At page 496 of the same document, is Mr. Schermerhorn's letter, informing the Commissioner of Indian Affairs that he had succeeded in making a treaty; and in that letter he says:

"I have also succeeded in obtaining the signatures of two of the delegates of the western Cherokees, approving the treaty *in toto*, and inviting their brethren to an equal participation in all the benefits and privileges of the Cherokee country west. This I deemed a very important measure, and to effect it I agreed to furnish them money sufficient to bear their expenses to Washington, and they will come on when the delegates from this part of the country go on, which will be on the third Monday in January."

Surely, it proves the weakness of the honorable Commissioner's argument, when he attempts to sustain the binding effect of the treaty of 1835 upon the western Cherokees, by such authority as this.

The western Cherokees appoint a delegation of four to represent them in a most important matter; the Government of the United States, being informed that their instructions did not conform to its views, denies their authority to interfere, and contemplates arresting and sending them out of the country; but the astute negotiator finding that he can induce one of them, by an advance of money, to violate his instructions, and by the same means tempt another western Cherokee to keep him countenance by also signing as a delegate, *buys* their signatures to an approval of the treaty; and now, the honorable Commissioner, after a full exposure of the transaction, alludes to this unauthorized and purchased act, as giving force to the treaty of 1835, in its assumptions to dispose of the property of the western Cherokees!

Thus vanishes the only shadow of pretence, that the western Cherokees ever assented to the treaty of 1835.

Your documents are full of proofs the most conclusive, that, being informed *beforehand* of its contemplated terms, they *then* most decisively

objected to them ; and that, from the time of its formation down to this day, they have never ceased to protest against it as an unwarranted violation of their recognised sovereignty and territorial rights.

The honorable Commissioner, after concluding the argument he deduces from the treaties, proceeds to say :

“ To the foregoing, which is, in my judgment, conclusive, will be added two national acts of the Cherokees, western and eastern, adopted at their western homes, that the Government of the United States must regard as having closed the question now made, even if it could be otherwise considered an open one. On the 12th July, 1839, a national convention, represented to have consisted of western and eastern Cherokees, entered into an arrangement, by which they became one people, covenanting, among other things, that all right and title to public Cherokee lands on the east or west of the river Mississippi, with, &c., shall henceforward vest entire and unimpaired in the Cherokee nation, as constituted by this union. Without adverting to the unfortunate dissensions and difficulties that, in 1839 and since, have existed among the Cherokees, I will bring to your notice, further, that the above act of union was substantially reënacted on the 26th of June, 1840 : ‘ We, the representatives of the eastern and western Cherokees, do hereby solemnly and mutually agree to form the two branches into one body politic, under the style and title of the Cherokee nation.’ The same engagement as to the lands, and in the same words as those recited from the resolution of 1839, are found in the act of 1840.”

We mean no personal disrespect in calling upon the honorable Commissioner to *answer himself* in relation to the first act of union, which he now sets up to estop us in our claim. At the first session of the 26th Congress, the Secretary of War, in reply to a resolution of the Senate, sent in a report from the Commissioner of Indian Affairs, dated March 3th, 1840, (see Document 327.) giving a narrative of the atrocious crimes which were consummated by the national convention, so called, of 1839. In reference to this pretended act of union, he says, page 8 :

“ It seems to be a weak assumption which lays claim to validity in the act of union. There was but one party really present. Whatever pains may have been taken to enlist or to intimidate the old settlers into a junction with the dominant party, those who yielded to the inducements held out were few ; and, with one or two exceptions, of little weight, and do not afford a decent color for the assertion that the tribe is united, or that any portion or number of them deserving to be characterized as their representatives, or whose acts could, in any proper sense, bind the old settlers or treaty party, assented to the proceedings of the convention of July, assembled under the auspices of their opponents, or to any other political or legislative act of the Ross party.”

Without copying other extracts from the Commissioner's report, of the same tenor, we appeal to him, not in anger, but in sorrow, to say, how he can now, as an impartial public officer, as much bound to do justice to the unhappy Indian as to be faithful to his own Government, urge upon the down-trodden western Cherokee as binding and conclusive, an act which, in 1840, he himself denounced as done when ‘ *there was but one party really present.*’

How is it, that he now sets up what he then called a “ *weak assumption,*” without even “ *decent color,*” as a conclusive and perpetual bar to the redress prayed for by a wronged and ruined people ?

Without pressing this point farther, we proceed to what the Commissioner calls the substantial reënactment of this act in 1840. It is by no means a subject of regret that we cannot on this point, also, answer the Commissioner with his own words ; but we do regret that he has not given a more careful attention to the essential points in this transaction ; for if he had done so, he must have pronounced the claim to validity for this act as “ *weak an assumption*” and as destitute of “ *decent color*” as was that of 1839. The eastern and western Cherokees, notwithstanding the pretended general convention of 1839, remained disunited as late as the 30th March, 1840, as was admitted by the Commissioner at that date.

How did they become one people in June, 1840?

The old settlers were a *community*, and had an established government on their lands west. The eastern Cherokees claimed to be a community, with a government brought with them from the east. If all, or a majority of the men composing *each* of these bodies, had gone into a general convention and established a new government, it would undoubtedly have superseded both the former governments, and merged both communities into one. If the convention at Illinois camp-ground, in 1839, had been attended by *both* parties instead of *one* only, such would have been the result of its act. But no separate community can be merged in another, or its government overthrown, but by conquest or the consent of a majority of its people. It is not in the power of a large State, like Massachusetts, to annihilate the separate existence of a small State, like Rhode Island, by a majority of the aggregate vote of *both* States. To effect that end, a majority of *each* must consent. Nor can the functionaries of a State, much less delegates appointed by them, barter away the independence and existence of the State they are appointed to serve, or overthrow its government, without the consent of a majority of the people. These principles are so obvious and so generally admitted, that it is unnecessary to discuss them.

That the western Cherokees had a right to institute, and actually had instituted a separate government, is not questioned. How was that government overthrown, and their political existence extinguished by the act of union in 1840? Was any general convention of *both* branches of the Cherokee family held? No. Was a convention of *each* branch held separately? No. Did a majority of the western Cherokees, by vote or otherwise, confer power on their government, or any set of delegates, to barter away their separate existence? No. Did they, by convention, vote, or any other mode, confirm or ratify any act merging them with the eastern Cherokees, or establishing a new government? No such thing. The United States military commander invited delegates from each party to come to him for the purpose of settling their difficulties, uniting them into one people, and establishing a government. The authorities of the eastern Cherokees, it seems, appointed a deputation of twelve men; there was no formal appointment whatever by the *authorities* or *people* of the western Cherokees; but a number of their principal men appeared on the ground *without instructions of any sort*. Eleven names of eastern Cherokees and twelve of the old settlers appear to the act of union. There they stand, in the documents of your Government, without the *form, substance, or shadow* of authority from their people to overthrow existing governments, merge separate nations into one, and create and give force and vitality to new institutions. Your commanding officer, in his report, expressly says: "The emigrants declared they had *no authority to alter the constitution*;" and no authority can be shown or ever existed empowering the old settlers present to alter *their* constitution. Nor was there afterwards any movement of the western Cherokees, confirming or pretending to confirm the act of those twelve men; and neither in morals nor in law, can their signatures to the articles, have any more binding effect upon that people, than the signatures of any other twelve unauthorized individuals in their community. Indeed, it has less "decent color" to support it than the act of 1839. Then, *one* party was present, but in 1840 *neither*; and the last act bears the names of fewer western Cherokees than

the first. This act of union, therefore, stands as an individual act, totally powerless to destroy the government of the western Cherokees, alienate their property, or subject them to a new dominion.

We think this position entirely invulnerable; but if any man doubt it, we call his attention to frauds on the face of the transaction which totally vitiate it, if considered otherwise valid. What says General Arbuckle? "*I prevailed on the old settlers to accept it, (the constitution which the western Cherokees had refused to accept, and the emigrants said they had no power to alter,) without admitting its legality until concurred in by them.*" How did they accept it? By putting their names to the act of union, concluding with this sentence: "*The constitution, however, adopted at Tahlequah, on the 6th September, 1839, and the laws enacted under its provisions, shall be the governing laws of the nation.*" Thus were they induced to adopt the very constitution they had rejected, under the notable advice that they could do so "*without admitting its legality until concurred in by them.*" What name does this deserve but a palpable fraud on the face of the transaction? Never have they "*concurred in*" that constitution and those laws; yet they are enforced upon them with ferocious severity, and the United States troops stand upon our borders with their bayonets always ready to sustain the tyranny of the government *de facto*.

Equally delusive and fraudulent towards the western Cherokees was the promise in the act of union of a participation in the *per capita* moneys, secured by the treaty of 1835, to the eastern Cherokees individually. Those moneys were due, not to the Cherokee nation east, but to the individuals of the nation. The authorities of the nation had no control over them. The individual Indians could not be deprived of their several rights to the money, by their chiefs, or council, or by any authority short of their own consent, or a *bona fide* national convention, concentrating in itself the power to dispose of the life, liberty, and property, of every individual in the community. Yet, a delegation appointed by the *chiefs* of the eastern Cherokees undertakes to impair the right of every one of their people to his just portion of this fund, and to transfer a part of it to the western Cherokees. Does not every intelligent man know, that the effort is impotent and vain; that each eastern Cherokee has a right to demand his full share as if this act of union had never existed; that the United States must pay it to him; and that not one dollar could or would the Commissioner himself pay to any western Cherokee without the special order or consent of the eastern claimant?

Another palpable fraud flares up on the face of this act of union, in its allusion to eastern Cherokee lands: "All right and title to public Cherokee lands on the east or west of the river Mississippi," &c., "shall henceforward vest entire and unimpaired in the Cherokee nation, as constituted by this union." In your good Book, the bad spirit, on a certain occasion, is represented to have offered, for a consideration, to give "all the kingdoms of the earth;" when he had not a foot of land out of the region his presence made a hell, and that was not his own. Equally bootless is the promise which the Ross party make to the western Cherokee in relation to the Cherokee lands *east* in the act of union. Not a foot have they there; and in this opinion the honorable Commissioner most heartily concurs. But, so far as the western Cherokee is concerned, the position of Ross and the Commissioner substantially concur. The one offers us for our lands a *visionary* consideration, and the other allows us *none at all*.

Such is this act of union by which the western Cherokee is to be forever barred from the assertion of his claim, and the vindication of his rights. It is unauthorized, fraudulent on its face, deceptive, null and void; nor has the least item of it, intended for the protection or benefit of the western Cherokee, ever been carried into effect. *Never* did they "have a just proportion of the offices and representation in the government of the nation, for the first constitutional term," "all to be of their own selection," as this paper promises. *Never* have they received or been offered a dollar of *per capita* money. *Never* one single benefit, privilege, or immunity, for the independence, the country, and the power, this instrument was intended to take from them.

Before we conclude this branch of the subject, we beg leave to ask, why it was that Mr. Schermerhorn considered the approval of a pretended delegation of the western Cherokees, to the treaty of 1835, so "very important?" Why was it that from the arrival of Ross, down to June, 1840, an act of union was pressed upon the western Cherokees by the United States with never-ceasing importunity? And why is it that your Commissioner of Indian Affairs *now* presses these fictitious and flagitious acts upon us as conclusive against our claims? These proceedings *themselves* furnish an answer. They proclaim, trumpet-tongued, that the western Cherokees had, in the estimation of this Government, a separate existence and separate property, of which they could not be deprived without their consent. If it was not so, why were not the western Cherokees told at once, *You have no right to separate existence or separate property; your nation is reunited, and you must submit to the majority?* Why were they tantalized and tortured by assurances of justice and protection, until something was procured bearing the seeming impress of their consent to excuse this Government in the total abandonment of all its treaty stipulations, for their benefit and protection? The world will say—it must say—that all this arose from the *consciousness* of this Government, that it was bound to recognise our separate existence, and secure us in the enjoyment of our property, until released from those obligations by the free consent of the western Cherokees. Has that consent ever been obtained? The question is already answered.

If we are correct in our facts and principles, (and we ask for them the closest scrutiny,) the exclusive right of the western Cherokees to their seven millions of acres of land, with the perpetual outlet west, has never been impaired, and their government remains *de jure* the government of their country to this day. The obligations of the United States, to protect them in the possession of their lands, and in the perpetual enjoyment of their rights as a distinct people, also remain unimpaired. It is to implore the fulfilment of those obligations, after asking it in vain from the Executive, that an appeal is now made to the Congress of the United States.

We are not insensible to the considerations which make it difficult, if not impracticable, for this Government to place us in the precise situation we occupied prior to the year 1838. The object of our argument has been to show you *what is just*. We ask you only to do *what is practicable*. Ross and his party are in the actual possession of our country, where they have a government of their own. If you cannot, with propriety, drive them out, or take from them the power to govern themselves, is it unreasonable in us to ask that we may be repossessed of a corner of

that country which is all our own, and receiving a reasonable consideration for the balance, be permitted to re-establish the government which has never been rightfully abolished?

What real obstacle is there to such an arrangement? None, so far as regards pecuniary considerations, for your country is great and rich. Will it be said that you cannot restore us even a corner of our country, because, by the treaty of 1835, you gave it to John Ross and his followers? If you committed an error, and gave away what was not yours to give, your obligation is quite as great now to restore the property to its rightful owners, as it can be to secure it to its wrongful possessors. But both parties remain upon the soil. If you have done wrong to both, you will not aggravate that wrong by assigning to each a due proportion of the country according to numbers.

But who are John Ross and his associates, and what have they done, that you should tenaciously insist on carrying out the treaty of 1835, for *their* benefit? They are the same men who have uniformly denied the validity of that treaty, from the time of its formation to the present day. They are the same who persuaded a large majority of the Cherokee nation east, to refuse a compliance with its terms. They are the same who sent a delegation to the Cherokees west, to procure our co-operation in defeating its ratification; the same who protested and memorialized the President and Congress, year after year, against its execution; the same who, at the Red Clay council-ground, on the 28th September, 1836, resolved: "That the said instrument is null and void, and can never, in justice, be enforced upon our nation; and we do hereby solemnly disclaim and utterly reject said instrument, in its principles and all its provisions." They are the same men who, at Aquohee camp, on the 21st July, 1838, declared that "the whole population of the Cherokee nation have been captured by order of the President of the United States, in order to their transportation from the land of their fathers to the west of the river Mississippi, in execution of the alleged stipulations of an instrument purporting to be a treaty made at New Echota, in 1835, but against the validity of which the Cherokees have always earnestly protested." The same who, at the same place, on the 1st of August, 1838, resolved, "That the whole territory, as described in the 1st article of the treaty of 1819, between the United States and the Cherokee nation, and also in the constitution of the Cherokee nation, still remains the rightful and undoubted property of said Cherokee nation; and that all damages and losses, direct or indirect, resulting from the enforcement of the alleged stipulations of the pretended treaty of New Echota, are, in justice and equity, chargeable to the account of the United States." Also resolved, "That the Cherokee people, in consenting to an investigation of their individual claims, and receiving payment upon them and for their improvements, do not intend that it shall be so construed as yielding or giving their sanction or approval to the pretended treaty of 1835, nor as compromising in any manner their just claim against the United States hereafter, for a full and satisfactory indemnification for their country, and for all individual losses and injuries." They are the same men who, going to Arkansas as a *community*, with these protests upon their lips, put to death the Ridges and Boudinot, and outlawed their associates, for the crime of negotiating this very treaty. They are the same who, in the pretended act of union and

constitution of government, still treat it as null and void; the same who rejected the patent you have offered them under its provisions; and the same who omit no occasion, public and private, to treat it with indignation and scorn.

In his last annual message, dated October 23, 1843, John Ross, their principal chief, still repudiates this treaty, and maintains that all the points purporting to be closed by it, are still open for adjustment.

The western Cherokees were informed beforehand of the contemplated provisions of this treaty, and opposed it as a flagrant infringement on their rights. They sent a delegation to Washington to prevent its confirmation, and have never ceased, and will not cease, to denounce it as a violation of the property and a prostration of the rights once and again solemnly guarantied by the United States to them and their successors forever.

What a spectacle is here presented! The treaty party, who were recognised east as competent to cede away a territory and extinguish a nation, are not considered west worthy to be protected when living, or avenged when dead. Its surviving members are now suing you (and so far in vain) for their individual shares of the purchase money of that country which you considered them competent to sell. They have ceased to be recognised or heard as clothed with any public authority, having on emigration merged with the western Cherokees. Ross and his chiefs, who were not recognised east as clothed with authority to prevent the execution of the treaty, are considered west as competent to receive all its benefits, to destroy its makers without responsibility, and, while denouncing it as void themselves, treat as criminals those who assert the rights which that very instrument violated! In his late message, John Ross denounces, by name, John Rogers, James Starr, and John A. Bell, as "reckless individuals, concocting mischief against our common country." Why should the United States continue to confer on those men the benefits of a treaty which they continue to reject? Why should this Government *force* upon them a title to our lands, when *they refuse to accept it*? Why give them money and power under an instrument they treat with scorn? Do they make such good use of the means put into their hands, that they should be rewarded for their contumacy, and encouraged in their waywardness? Can the United States plead an obligation to execute the treaty for the benefit of those who in their face deny that obligation, as a justification for abandoning to destruction the men with whom it was made, and the community whose property it violates, and whose government it subverts? Is it not unjust and cruel to hold up to *us* the treaty of 1835, and the pretended acts of union formed under it, as a plea for not protecting us against the wrongs and oppressions of men who themselves deny all their obligations? Ross and his party, now recognised as the Cherokee nation, reject the treaty. The western Cherokees were no party to it, and protest against its assumptions and its consequences. Why may not the United States, taking things as they are, consider all matters, not absolutely closed under that treaty, open for readjustment? This would be but taking Ross and his associates at their word. In his message to the council, on the 23d of October last, that chief uses the following language, viz:

"In my message of November last, you were informed of the failure of the delegation to nego-

tiate a new treaty with the United States Government, upon the principles previously promised by President Tyler; and that the President had again assured the delegation of his unaltered disposition, at a more propitious time, to conclude such an arrangement.

"Apart from the pecuniary claims of the nation, both private and public, almost every day's experience shows the propriety and necessity of defining and establishing our national rights and relations with the United States Government; and until this shall be done by treaty, it will be impossible for us, in the exercise of jurisdiction, to avoid occasional collisions with the authorities of the United States.

"The instrument which was signed by individuals of our nation, and John F. Schermerhorn, as a commissioner on the part of the United States, at New Echota, in 1835, and called a treaty, *has never been authorized by our nation, nor since acknowledged by the Cherokee people, so as to make it legally binding*; and, withal, its stipulations are so full of ambiguity, that the difference of opinion in regard to their construction have been productive of much dissatisfaction.

"These facts, however unpleasant it may be, will compel us to continue and keep up the painful controversy with the authorities of the United States, until the subjects in dispute shall be more satisfactorily arranged.

"The plea of policy and expediency which was so strongly urged under President Jackson's administration, for the ratification and enforcement of the New Echota treaty, no longer exists, its intentions having been carried out, and our nation removed from our peaceful homes, our beloved country, at the point of the bayonet,—the Cherokee people submitting in peace to superior power, and in no instance having committed any breach of the national faith, by which the protection of our rights, as guaranteed in our treaties with the United States, can be declared as having been forfeited, they cannot in justice be withheld from us. But inasmuch as this plea, which prompted the General Government to carry out this harsh measure for the aggrandizement of certain States, by which our nation has been wronged and seriously injured, no longer exists, we have now, in approaching the Government with our grievances, only to desire that our wrongs may be redressed upon just principles, and our national rights secured upon liberal and honorable terms. To say that because the Schermerhorn instrument has been ratified, and is now a law of the land—or that because they possess a physical power to compel the Cherokee people to submit to their will and pleasure, they will not agree to supersede it by a treaty which will be more righteous and satisfactory to the contracting nations—would be beneath the dignity of the United States. The idea, then, cannot for a moment be maintained, that such grounds will be taken. Experience has shown us that wrongs, long suffered, have often in the end been redressed; and we have had abundant examples of the magnanimity and justice of the people and the Government of the United States. Knowing, therefore, the principles upon which that Government is based, and that the executive officers of the several departments are sometimes led astray from the path of justice by political influences, which, for a time, are seriously felt, let us press the justice of our claims, and before long we may find President Tyler prepared to meet his pledges to us."

With these declarations from the chief of the Cherokee nation, the *only party to the treaty of 1835, other than themselves, which the United States now recognise*, what possible obligation can there be upon this Government to force on that people a further execution of the treaty of 1835? Certainly the United States are not obliged to consider themselves bound to heap favor, and money, and power, on those who do not themselves recognise, but, on the contrary, repudiate, the entire instrument out of which that obligation is supposed to spring.

It cannot be unjust to take Mr. Ross and his associates at their word, and hold the whole subject of their "national rights and relations with the United States," as well as their right to govern and possess the country they now occupy, open for present adjustment.

We, therefore, most humbly beseech the Congress of the United States to institute an immediate inquiry into the origin and history of the Cherokee government west, and whether the same, never having been lawfully subverted or relinquished, be not, *de jure*, the only legitimate government of our country; and to inquire further, whether the lands ceded and guaranteed to the western Cherokees by the treaties of 1828 and 1833, were not and are not now, the exclusive property of their community, including *voluntary* emigrants from the east. And if it shall appear to the honor-

able Congress that our government is, *de jure*, the government of the Cherokee territory west, and that those lands are their exclusive property, and have been wrongfully taken from them by another community stronger than they, thrown upon them in mass, we further pray that the intruders upon those lands may be removed, leaving the western Cheokes in the quiet possession of the property and political rights of which they have been wrongfully and cruelly despoiled ; or that such other reparation may be made them as is compatible with justice, and also with the good faith, honor, and policy, of the United States.

WASHINGTON CITY, *March 30th*, 1844.

JOHN ROGERS,
JAMES CAREY, his x mark.
THOMAS L. ROGERS.

Teste : GEO. W. PASCHAL.